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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

RIN 0648-XG809

Notification of Receipt of a Supplemental Petition to Ban Imports of All Fish and Fish Products from New Zealand That Do Not Satisfy the Marine Mammal Protection Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of supplemental petition to ban imports through emergency rulemaking; request for comments.

SUMMARY: NMFS announces receipt of a supplemental petition for emergency rulemaking under the Administrative Procedure Act. Sea Shepherd Legal, Sea Shepherd New Zealand Ltd., and Sea Shepherd Conservation Society petitioned the U.S. Department of Commerce and other relevant Departments to initiate emergency rulemaking under the Marine Mammal Protection Act (MMPA), to ban importation of commercial fish or products from fish that have been caught with commercial fishing technology that results in incidental mortality or serious injury of Māui dolphin in excess of United States standards.

DATES: Written comments must be received by 5 p.m. Eastern Time on *[insert date 10 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2019–0013, by the following method:

1. *Electronic Submissions:* Submit all electronic comments via the Federal eRulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0013, click the “Comment Now!” icon, complete the required fields and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Anyone who is unable to comment through <http://www.regulations.gov> may contact the *FOR FURTHER INFORMATION CONTACT* below to discuss potential alternatives for submitting comments.

Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe portable document file (PDF) formats only. The complete text of the petition is available via the internet at the following web address: <http://www.nmfs.noaa.gov/ia/>. In addition, copies of this petition may be obtained by contacting NMFS at the above address.

FOR FURTHER INFORMATION CONTACT: Nina Young, NMFS F/IASI at *Nina.Young@noaa.gov* or 301–427–8383.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(2) of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1371(a)(2), states that the Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology, which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards. In August 2016, NMFS published a final rule (81 FR 54390; August 15, 2016) implementing the fish and fish product import provisions in section 101(a)(2) of the MMPA. This rule established conditions for evaluating a harvesting nation’s regulatory programs to address incidental and intentional mortality and serious injury of marine mammals in fisheries operated by nations that export fish and fish products to the United States. In that rule’s preamble, NMFS stated that it may consider emergency rulemaking to ban imports of fish and fish products from an export or exempt fishery having or likely to have an immediate and significant adverse impact on a marine mammal stock.

Information on the Petition

On February 6, 2019, NMFS received a petition from Sea Shepherd Legal, Sea Shepherd New Zealand Ltd, and Sea Shepherd Conservation Society to the Department of Homeland Security, the Department of the Treasury, and the Department of Commerce to carry out non-discretionary duties under section 101(a)(2) of the MMPA (16 U.S.C. 1371(a)(2)), to ban the importation of commercial fish or products from fish sourced in a

manner that results in the incidental kill or incidental serious injury of Māui dolphins in excess of United States standards. The petition requested that the relevant Secretary immediately ban all fish and fish products originating from fisheries in the Māui dolphin's range that employ either gillnets or trawls, unless affirmatively identified as having been caught with a gear type other than set nets or trawls or affirmatively identified as caught outside the Māui dolphin's range.

NMFS reviewed the petition, supporting documents, New Zealand's previous risk assessments and Threat Management Plans (TMP). On June 18, 2019, NMFS denied the petition, stating that: (1) New Zealand is implementing a regulatory program comparable in effectiveness to the United States; (2) New Zealand has in place an existing regulatory program to reduce Māui dolphin bycatch; and (3) New Zealand was in the process of proposing additional regulatory measures that would further reduce the risk to Māui dolphins. (See 84 FR 32853, July 10, 2019.)

Petitioners filed a lawsuit against the relevant Departments in the United States Court of International Trade (CIT) on May 21, 2020. On August 13, 2020, the CIT remanded Sea Shepherd's February 2019 petition at NMFS' request, because New Zealand had announced its final regulatory program. NMFS proposed, and the court agreed, that the petitioners should have the opportunity to supplement their petition.

On August 27, 2020, NMFS received the supplemental petition, which both maintains the grounds for action outlined in the original petition and includes facts that arose after submission of the original petition. The supplemental petition directs attention to the following new information: (1) the receipt of data from the New Zealand government noting sightings of Māui dolphins on the east coast of the North Island; (2)

the issuance of the 2019 Draft TMP; (3) the final TMP announced on June 24, 2020; and
(4) the 2020 draft List of Foreign Fisheries.

NMFS will consider public comments received in its evaluation of the
supplemental information received from the petitioners.

Dated: September 24, 2020.

Paul N. Doremus,

Deputy Assistant Administrator for Operations,

National Marine Fisheries Service.

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